IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2565 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SARPANCH

Versus

PRESIDENT

Appearance:

1. Special Civil Application No. 2565 of 1996

MR JA ADESHRA for Petitioner No. 1

RULE SERVED for Respondent No. 1

M/S THAKKAR ASSOC. for Respondent No. 2

Mr.Hashmukh C.Patel, AGP for Respondent No. 3-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 17/06/2002

ORAL JUDGEMENT

The petitioner-Gram Panchayat has approached this court for giving appropriate direction to the Taluka Panchayat to refund 40% of the gross collection of the cess made by it for the year 1995-96, and it is also

prayed for giving appropriate direction to the respondents to assign 50% of the gross collection of Taluka panchayat cess and surcharge on octroi as per section 206 of Gujarat Panchayats Act, 1993 (hereinafter referred to as the "Act").

2. The short facts of the case are that the petitioner is a Gram Panchayat duly constituted under the provisions of the Act. It is collecting the octroi and other local taxes and it is the contention of the petitioner-Panchayat that collection of certain taxes which are meant for the purpose of Taluka Panchayat is made by the Gram Panchayat and is given to the Taluka Panchayat. It is an admitted fact that the petitioner-Gram Panchayat was paid 10% of the collection for the year 1995-96. However, 90% of the amount of the gross collection was retained by the Taluka Panchayat, Meghraj. The petitioner had made representation to the authority for refund of 40% of the gross collection for the year 1995-96. However, nothing was done and therefore this petition.

3. Mr.Adeshra appearing for the petitioner submitted that on true and correct interpretation of section 206(2)(b) of the Act, the fund of the Taluka Panchayat, at the most, can constitute 50% and not more. He submitted that therefore the Taluka Panchayat has no authority to retain more than 50% of the gross collection and therefore the Gram Panchayat is entitled to get back 50% of the gross collection. Mr.Adeshra in furtherance of his submission has also contended that the intention of the legislature behind making the provisions is to see that the Gram Panchayat is sufficiently compensated and can utilise something for the betterment of the residents of the Gram Panchayat. Mr.Adeshra submitted that the Taluka Panchayat, under no circumstances, can retain the amount exceeding 50% from the gross collection.

4. On behalf of respondent-Taluka Panchayat, Mr.Pahwa submitted that the State Govt has passed an order dated 21.12.1967 in purported exercise of powers under clause (b) of subsection (2) of section 183 of Gujarat Panchayat Act, 1961 whereby the State Govt has determined 10% of gross collection of the tax or fee as the percentage for the purpose of said sub clause and submitted that the amount of 10% is admittedly paid and therefore he submitted that in view of the general order passed by the State Govt under the old Act of 1961 which continues (the order continues) after the new Act since there is no further order passed by the State Govt under section 206(2)(b) when the notification was brought to the notice of the court whereby the aforesaid general order has been passed by the State Govt on 21.12.1967.

Mr.Adeshra for the petitioner submitted that as per the provisions of the Act for each financial year the State Govt has to pass a separate order and therefore he submitted that at the most the order produced on behalf of the Taluka Panchayat can be said to be the order for the year 1967-68 and it can not be for the year 1995-96. He further submitted that the Govt could not pass the order dehors the statutory provisions and therefore he further submitted that the petitioner Gram panchayat is entitled to the benefits conferred by the statute and the taluka panchayat has no authority to retain the amount exceeding 50% of the gross collection. Section 206(2) (a) and (b) which are relevant for the purpose of this petition read as under:

"206(2)(a) Where in the exercise of powers under subsection (1) a taluka panchayat imposes a tax or fee in any area within the jurisdiction of a village panchayat, such tax or fees shall be collected by the village panchayat concerned from those persons who are liable to pay the same under the rules made by the taluka panchayat in accordance with the provisions of section 215 as if it were a tax or fee imposed by the village panchayat concerned under the provisions of this Act and shall be paid to the taluka panchayat at such time and in such manner as the taluka panchayat may specify.

(b) Such percentage not exceeding 50% of the gross collection of such tax or fee in any financial year as the State Govt may by general or special order determine shall not form part of the taluka fund but shall be assigned to the village panchayat in such manner as the taluka panchayat may determine."

5. There is no dispute on the point that prior to the Act of 1993 similar provision under section 183(2)(a) and (b) under Gujarat Panchayats Act, 1961 was in pari materia with section 206(2)(a) and (b) of Gujarat Panchayats Act, 1993.

6. On correct interpretation of clause (b) of subsection (2) of section 206 it transpires that the State Govt may by general or special order determine that part or percentage of gross collection not exceeding 50% shall not form part of taluka fund and shall be assigned to the village Panchayat in such a manner as the State Govt may determine.Therefore, the State Govt is having the power to pass special or general order to determine

the percentage not exceeding 50% which may not be considered as the fund of Taluka Panchayat and shall be assigned to village Panchayat. In the present case the State Govt has passed order under section 183(2)(b) which is in pari materia with the section of the new Act and this order is not an executive order but can be said to be legislative action of the State Govt as provided under the scheme under Taxing statute of the Panchayat Act. I do not agree with the interpretation sought to be canvassed by Mr.Adeshra that the Taluka Panchayat may not be able to retain the fund and has to assign the said fund to the village panchayat from the gross collection of a percentage exceeding 50% even if ordered by the State Govt by general or special order. The provision is made under the statute for providing 50% is the maximum amount for the purpose of attribution to the village panchayat and once it is to be attributed to the gram panchayat or assigned to the gram panchayat it will not form as a fund of taluka panchayat or taluka fund. Therefore the language used in clause (b) "shall not form part of taluka fund" is to be read and interpreted vis-a-vis the word "shall be assigned to the village panchayat". Therefore, the State Govt can by special or general order determine the percentage not exceeding 50% from the gross collection of such tax or fee. As the word "shall not form part of taluka fund" has nexus with the word "shall be assigned to village panchayat" the only interpretation would that 50% is the maximum amount which may be assigned to the village panchayat and it can not be interpreted that the Taluka Panchayat can not retain the fund exceeding 50% stipulating as the maximum limit for the purpose of retaining fund by the taluka panchayat. Therefore, the said contention of Mr.Adeshra fails.

7. As regards the second contention of Mr.Adeshra that the order passed by the State Govt can at the most be applicable for the year 1967-68 is also devoid of any merit, the reason being that the State Govt has power to pass the general order for fixing a percentage for attribution or allocation of fund to the gram panchayat and the same can be for gram panchayats of the whole State. Not only that but on correct interpretation of the provisions of the Act, it appears that this power vested with the State Govt under section 206(2) of the Act which is a subordinate legislation and therefore once the State Govt has passed order unless it is substituted by another order, it would remain in force. I do not find any justification in restricting the applicablity of such order under the Act for a particular period of 1967-68 because nothing is reflected in such order and so

far as the provisions of the section is concerned the word "in any financial year" is given for the purpose of determining the percentage and it has no nexus with the power of the State Govt for any particular financial year. But, at the same time, it can not be said that when a general order is passed, the State Govt can not pass special order. However, in absence of anything stated in the order, there is no valid reason to restrict its applicability to that particular year and it is more rationale to consider that the said general order is applicable subsequently also. Therefore, I am of the view that the order passed by the State Govt dated 21.12.1967 is a general order and is holding the field since in any case Mr.Adeshra is not in a position to show any other subsequent order fixing a different percentage than the percentage fixed in the order dated 21.12.1967.

8. In view of the above, I am of the opinion that when an amount of 10% as fixed by the State Govt is already paid to the gram panchayat, it can not be said that the taluka panchayat has wrongly retained the amount from the gross collection and therefore the gram panchayat is not entitled to any amount from the gross collection as prayed for in the petition.

9. In the result, petition fails. Rule is discharged. There shall be no order as to costs.

17.6.2002 (JAYANT PATEL,J)